0000089297

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

2008 OCT -8 P 3:34

AZ CORP COMMISSION
DOCKET CONTROL

Arizona Corporation Commission
DOCKETED

COMMISSIONERS

MIKE GLEASON, Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

IN THE MATTER OF THE APPLICATION OF ARIZONA PUBLIC SERVICE FOR A HEARING TO DETERMINE THE FAIR VALUE OF THE UTILITY PROPERTY OF THE COMPANY FOR RULEMAKING PURPOSES, TO FIX A JUST AND REASONABLE RATE OF RETURN THEREON, TO APPROVE RATE SCHEDULES DESIGNED TO DEVELOP SUCH RETURN.

DOCKET NO. E-01345A-08-0172

POST-HEARING REPLY BRIEF OF COMMISSION STAFF (INTERIM RATES)

I. INTRODUCTION.

Arizona Corporation Commission Staff ("Staff") hereby files its Reply Brief in this matter, responding to the various initial post-hearing briefs filed by Arizona Public Service Company ("APS" or "Company"); the Arizona Investment Council ("AIC"); Mesquite Power, LLC, Southwestern Power Group II, LLC, and Bowie Power Station, LLC (collectively "Mesquite Group"); Freeport-McMoran Copper and Gold, Inc. and Arizonans for Electric Choice and Competition (collectively, "AECC"), and the Residential Utility Consumer Office ("RUCO"). Staff continues to believe that APS has failed to establish that interim relief is necessary or appropriate. If the Commission were inclined to grant the Company some amount of interim rate relief, Staff recommends that the Commission grant relief no greater than $65.2 million.

II. THE APPLICABLE LEGAL STANDARD FOR AWARDING INTERIM RATES.

APS urges a broad construction of the Commission's authority to grant interim rate relief, arguing that the Commission may award interim rate relief in this case without any finding of an emergency and without any finding of fair value.[1] RUCO, by contrast, concludes that the Commission's authority to grant interim rates is limited to circumstances in which an emergency

[1] (APS' Int. Post-Hrg. Br. at 5-9, 12-13).

exists, a bond is posted, and a general rate case is pending.[2] Both of these positions appear to represent rather extreme views of Arizona law.

Staff agrees with those portions of APS' argument that assert the broad scope of the Commission's ratemaking authority. APS is correct in noting that "the Commission's powers are not limited to those expressly granted by the Constitution; the Commission may exercise all powers necessary or essential in the performance of its duties."[3] APS appears to suggest, however, that interim rate relief should be available at almost any time, as a means "to award a utility all appropriate rate relief . . . ."[4] This extreme view could transform interim rate relief into an accelerated vehicle for permanent rate relief and would essentially eliminate the differences between permanent rate cases and interim rate cases.

Interim rate relief is intended for extraordinary, unusual, or exigent circumstances. *Residential Utility Consumer Office v. Ariz. Corp. Comm'n*, 199 Ariz. 588, 20 P.3d 1169 (App. 2001); Op. Att'y Gen. 71-17 (1971). It is not, as APS would apparently prefer, a means to accomplish early rate relief for rate base additions or for perceived shortfalls in equity returns. Interim rate relief should be viewed as an extraordinary remedy because interim rate proceedings are expedited and therefore lack the extended opportunities for discovery and audit that are normally associated with Commission rate cases. Because both the time and the means for processing and evaluating interim rate cases are abbreviated, an interim rate case is not the most thorough or complete means for setting rates. Such procedures should therefore be used sparingly, as the exception instead of the rule.

Although Staff disagrees with APS' claim that interim rate relief is available on a somewhat routine basis, Staff also disagrees with RUCO's conclusion that the Commission's ability to award interim rates is limited to emergency circumstances. RUCO relies upon *Residential Utility Consumer Office,* 199 Ariz. at 591, 20 P.3d at 1172, to support its view that the Commission cannot grant interim rates absent an emergency, a posted bond, and a pending rate case. Certain passages in that opinion would tend to support the conclusion that the Commission's authority to implement interim

---

[2] (RUCO's Int. Post-Hrg. Br. at 4-5).
[3] (APS' Int. Post-Hrg. Br. at 5 *quoting* Op. Att'y Gen. 71-17 at 2-3).
[4] (APS' Int. Post-Hrg. Br. at 5).

rates should be narrowly construed. *Id.* The *RUCO* case does not, however, address the scope or the nature of permissible rate relief in the event that the Commission makes a fair value finding.

In the *RUCO* case, the Commission had approved a surcharge for a water utility to recover increases in purchased water costs. *199 Ariz.* at 589-90, 20 P.3d at 1170-71. The Commission established these rates without a fair value finding. Although *RUCO* could be read to limit the circumstances under which the Commission may award interim rates without an accompanying fair value finding, it does not address what would otherwise be appropriate if the Commission *were to make a fair value finding.*

RUCO's view of the Commission's authority to implement interim rates would appear to significantly restrict the Commission's ability to act in an impending emergency. As the fourth branch of Arizona government and the exclusive authority for ratemaking, the Commission should be able to do more than just sit idly by in extraordinary or exigent circumstances that nonetheless fall short of an actual emergency. *See Arizona Corporation Commission v. State ex rel. Woods*, 171 Ariz. 286, 297, 830 P.2d 807, 818 (1992).

In summary, although the Commission's authority to grant interim rates is probably not limited to circumstances that present an ongoing emergency, interim rates should nonetheless be regarded as an extraordinary form of rate relief, available only in connection with urgent, unusual, or special circumstances. If an emergency has occurred or is occurring, a fair value finding is unnecessary. *See RUCO*, 199 Ariz. at 591, 20 Pl3d at 1172. However, if an emergency is not present, the Commission should make a fair value finding if it elects to grant interim rates.

III. INTERIM RATE RELIEF DOES NOT APPEAR TO BE JUSTIFIED IN THE CIRCUMSTANCES OF THIS CASE.

APS claims that it is facing an impending downgrade of its credit rating from BBB- to non-investment grade, or "junk" status. APS further claims that such a downgrade justifies interim rate relief. APS also claims that other current circumstances, which it characterizes as "highly unusual," justify interim rate relief.[5]

[5] (APS' Int. Post-Hrg. Br. At 13-15).

Although an impending rating agency downgrade might constitute an emergency or a special circumstance that would justify interim rate relief, Staff is not convinced that such a downgrade is imminent in this case. As to the remaining factors that APS has raised, Staff is not convinced that they are unusual, extraordinary, or otherwise different from the circumstances facing virtually all Arizona utilities. Based on this record, interim rate relief does not appear to be either necessary or appropriate.

A. <u>To The Extent That APS Bases Its Request For Interim Rate Relief Upon Certain Private Conversations Between APS' Representatives And Ratings Agency Personnel, Such Evidence Should Be Given Very Little Weight.</u>

APS maintains that, unless the Commission grants its request for interim rate relief, its projected FFO/Debt ratio for 2009 will fall below *eighteen percent*, and its bond rating will immediately (in 2008) be downgraded to "junk." This claim presents some difficulty because, under the new S&P ratings guidelines, the specified FFO/Debt ratio for APS now falls within a range of *ten percent to thirty percent*. (Tr. at 288). For a company with a business risk profile of "strong" and a financial risk profile of "aggressive," like APS, the range is now ten percent to thirty percent, *not* eighteen percent to twenty percent.

Citing certain private conversations between APS witness Brandt and S&P, APS claims that it must maintain an FFO/Debt ratio of at least eighteen percent to avoid a downgrade. *Id.* at 368, 453. In these private conversations, S&P has supposedly informed APS that it (S&P) will continue to apply the old eighteen percent ratio when evaluating APS. The issue for Staff (and for other parties as well) is that these private conversations cannot be independently verified and evaluated.

APS relies heavily upon these private conversations to support its claim that a downgrade will be imminent in the absence of interim rate relief. *Id.* at 320, 322. The lack of opportunity for verification and evaluation of these private conversations is significant from an evidentiary standpoint, because APS' perceptions or evaluations are often different than Staff's. It should come as no surprise that Staff often views the same facts and the same data differently than does the Company. To understand this, one need only undertake a cursory review of the Commission's decision in APS' last full rate case.[6] That decision recounts any number of issues over which the Company and Staff were in profound disagreement. *Id.*

That Staff—as well as other parties—might reach a different conclusion based upon the same information is a relatively ordinary feature of regulation. If Staff were able to evaluate the basis of these private conversations, what would Staff conclude? We do not know the answer to this question, because the opportunity to examine this information first-hand is not available. *Id.* at 373-74, 498. At best, then, the evidence of these private conversations should be given very little weight, because this evidence cannot be independently verified and examined, and because it is somewhat inconsistent with the rating agencies' written reports, which, in Staff's view, do not suggest that a downgrade is imminent.[7]

B. <u>The Other Factors That APS Claims Are Unusual, Extraordinary, Or Significant Are Ordinary And Routine Aspects Of Regulation.</u>

APS also claims that it is facing a "highly unusual combination of financial pressures in an environment of extraordinary regulatory lag."[8] APS follows that statement with a list of factors that are allegedly illustrative of its claims. These various factors, however, do not support the claims that APS makes.

1. The regulatory factors and other general economic factors that APS cites do not appear to create an emergency for APS, nor do they create unique, special, or unusual circumstances.

In its list, APS includes certain features of regulation—such as the historic test year as well as the regulatory lag associated with plant additions between rates cases—as somehow illustrative of the unusual regulatory circumstances facing APS.[9] To the contrary, these are not unusual features of regulation, but are instead quite ordinary. (Ex. S-1 at 11-14).

APS goes on to list a variety of other, more general factors, such as increases in commodities costs, foreign-exchange pressures, and the current economic crisis, apparently alleging that these factors create some sort of unusual or urgent circumstances for APS. Although these kinds of general factors tend to affect the economy generally, it is difficult to conclude that they have an unusual or

---

[6] (Decision No. 69663 (June 28, 2007)).
[7] (Staff's Int. Post-Hrg. Br. at 23-25).
[8] (APS' Int. Post-Hrg. Br. at 13).
[9] *Id.* at 13-15.

extraordinary impact upon APS, and APS has not demonstrated any upon this record. Furthermore, the increases in commodities costs tend to slow down growth generally, which in turn is slowing APS' Cap-Ex requirements.

APS also alludes to the current economic crisis as a justification for interim rate relief. At this point in time, however, it is impossible to predict not only the scope of the economic downturn but also its potential effects upon APS. Even if the current economic crisis is prolonged, it is possible that APS may actually benefit, because, in uncertain times, investors may perceive utilities such as APS as more stable than other companies.

In summary, although APS has listed 1) certain features of regulation that it may perceive as negative and 2) certain economic factors that may tend to be negative, it has not shown how these factors create an emergency under the standards of the Attorney General's 1971 Opinion or the *RUCO* case, nor has it shown how these general regulatory or economic factors create special or extraordinary circumstances for APS. Indeed, if the Commission were to conclude that these general factors constitute special circumstances justifying interim rate relief, the Commission should brace itself for a flurry of interim rate applications from other Arizona utilities, all alleging these same factors.

2. Arguments about whether APS' current rates are inadequate should be addressed in a general rate case, not an interim rate case.

As the Attorney General's opinion notes, "perhaps the only valid generalization on this subject is that interim rate relief is not proper merely because a company's rate of return has, over a period of time, deteriorated to the point that it is unreasonably low." Op. Att'y Gen. 71-17 at 13. In this matter, APS appears to be claiming that its present rates are inadequate. For example, APS claims that its "costs have continued to outpace its revenues, resulting in a massive and growing earnings shortfall . . . ."[10] APS goes on to claim that, "[b]ecause rates are based on a historical test year," its "rates also have not kept pace with its costs."[11] Finally, APS concludes that, "[a]s a result of its continuing inability to recover its properly incurred costs through adequate rates, APS has lacked any opportunity to approach its authorized 10.75 percent rate of return for several

[10] *(APS' Int. Post-Hrg. Br.* at 14).
[11] *Id.*

years . . . ."[12] While all of these statements—if true—would support the conclusion that APS' rates are inadequate, none satisfies the standard for interim rate relief.

Furthermore, all of these claims are more properly dealt with in a general rate case. APS appears to be using this interim rate proceeding as a means to seek an early installment of permanent rate relief. This is inappropriate: interim rates should be reserved for emergencies or other extraordinary circumstances. As this brief has already stated, the accelerated processing times applicable to interim rate proceedings foreclose the extended discovery and full audit that are routine in general rate proceedings. Without adequate time to conduct such evaluations, APS' complaints about its current rates cannot be fully scrutinized.

3. Interim rates are not justified by APS' statements about its current credit metrics or Pinnacle West's stock performance.

APS points out that its current credit metrics "have fallen to a level just above junk status . . . ."[13] APS also notes that all parties agree that a further decline in APS' credit ratings would be detrimental to both the Company and its customers.[14] What APS fails to emphasize is that its credit metrics were downgraded not recently, but in 2005. Whatever else APS' current credit metrics may indicate, they do not show that APS has experienced a sudden, unanticipated misfortune, that APS is insolvent, or that APS is unable to continue to provide adequate service to its customers. Considering that APS' ratings have remained unchanged since 2005, it is also difficult to conclude that their current ratings are indicative of any special or unusual circumstances. Further, APS' outlook was recently upgraded by Moody's from "negative" to "stable."

Finally, Pinnacle West's stock performance is not necessarily directly hinged on APS' performance. As noted by Fitch in its analysis of Pinnacle West, impacts to SunCor, Pinnacle West's real estate subsidiary, relate to the national housing market downturn, and these effects, in turn, influence Pinnacle West's performance. (Ex. S-4, APS13041, at 1 of 2 (FitchRatings January 23, 2008)). S&P likewise acknowledges SunCor's vulnerability in the present housing market as playing a part in the overall outlook for Pinnacle West. *Id.* at APS13073, at 2 of 5 (S&P RatingsDirect June

---

[12] *Id.*
[13] *Id.*
[14] *Id.*

25, 2008). *See also id.,* APS13071, at 2 of 9 (S&P RatingsDirect June 25, 2008) (noting SunCor's recent negative circumstances as a major ratings factor weakness due to constrained ability to make distributions to the parent). Therefore, Pinnacle West's stock performance should not necessarily be taken as reflective of APS' performance, and this factor should not figure prominently in determining whether APS should be awarded interim rates.

IV. STAFF'S ALTERNATIVE RECOMMENDATION IS APPROPRIATE IF THERE IS TO BE AN INCREASE.

Although the evidence in support of a credit rating-downgrade is somewhat questionable, the Company persists in adhering to the need for an interim rate increase to preserve its FFO/Debt financial metric.[15] Additionally, the Company continues to advance the position that $115 million, a number premised upon a wholly unrelated adjustor surcharge, remains an appropriate basis for determining the amount of any interim rate increase.[16] In the alternative, the Company has attempted to modify Staff's recommendation by adding inputs that are unreasonable in the context of an interim rate proceeding. The Company's modifications appear to be aimed at achieving a rate increase equal to or greater than the originally requested $115 million.[17]

As Staff has made clear, not only is the FFO/Debt ratio difficult to bracket as a target for rate setting purposes, it is also uncertain that this metric is of such overriding significance that it merits ignoring other metrics that are likewise used in setting credit ratings.[18] Further, the $115 million amount of requested rate relief is not related to achieving any particular FFO/Debt ratio. The number was derived arbitrarily in order to make the rate increase "less obvious to the financial community than it turns out to have come." (Tr. at 861). Nor is APS able to guarantee that an award of this requested amount would be sufficient to stave off the credit rating downgrade that the Company believes is imminent. *See, e.g.,* tr. at 864, APS' Int. Post-Hrg. Br. at 21.

Rather than focus on its requested increase, APS instead devotes substantially more effort to proposing adjustments to Staff's alternative recommendation, apparently in an effort to make its own proposal appear more reasonable. Staff's alternative reasonably considers the net change in rate base,

---

[15] (APS' Int. Post-Hrg Br. at 21-22).
[16] *Id.* at 21.
[17] *Id.* at 23-27.
[18] (Staff's Int. Post-Hrg. Br. at 18-20, 28-29).

changes in accumulated depreciation, and other rate base changes that have occurred through the end of the 2007 test year from the Company's permanent rate case. (Tr. at 681). The Company suggests that the Commission should adjust Staff's recommendation to include in rate base post test year plant for 2008 and planned capital expenditures for 2009. The Company also suggests that the Commission should increase accumulated depreciation to incorporate these out of test year additions. *Id.* at 462-63. In sum, these additions increase Staff's recommendation of approximately $65.2 million to $167 million for 2008 and $247 million with the inclusion of the 2009 additions. *Id.* at 464, 507.

In the alternative, the Company also proposes a more specific set of post test year plant inclusions under the premise that these facilities are in service now and serving customers.[19] These items include the new combustion turbines at the Yucca facility in Yuma and the steam generator upgrade at Palo Verde Unit 3.[20] According to the Company's calculations, including these post test year items in rate base would produce a rate increase somewhat higher than the Company's requested increase of $115 million.[21]

Neither of the Company's proposed deviations from Staff's recommended alternative is appropriate. Staff contends—and the Company concedes in its brief—that adopting the Company's position on depreciation expense would have impacts for the Company's income statement.[22] The approach that APS suggests would appear to contradict one of the Company's core objectives: to improve its standing with the rating agencies. APS claims that it is seeking interim rate relief to deal with issues of regulatory lag. *See, e.g.,* tr. at 432, 450, 747. To that extent, the Company's statement that "other expenses associated with the plant . . . would at the very least offset any unidentified income statement reductions and can be more appropriately addressed in the general rate case" is contradictory to the very goals that APS purportedly seeks to accomplish in the present proceeding.[23] As the Company implicitly notes by proposing to defer these issues, its proposed changes to Staff's

---

[19] (APS' Int. Post-Hrg. Br. at 25).
[20] *Id.*
[21] *Id.* at 27.
[22] *Id.* at 23.
[23] (APS' Int. Post-Hrg. Br. at 23-24).

alternative will make the issues faced during the permanent rate case more complex. This will necessarily impact the amount of time necessary to process the general rate case.

The same inconsistency applies to the consideration of out of test year plant that the Company proposes, even plant that is currently existing and serving customers. Mr. Brandt has confirmed that none of the proposed out of test year expenditures for plant additions has been found prudent, nor have the related expenses been analyzed, nor have all of the expenditures even been made. (Tr. at 464-67). These issues, however, will have an impact on the length of time necessary to process the general rate proceeding.

At a practical level, these matters are not appropriately addressed in an interim rate proceeding, where there is no detailed evaluation of the Company's income statement adjustments and no engineering evaluation to support a conclusion that out of test year plant is reasonably included in rate base. *Id.* at 619-20. Pending a thorough accounting analysis, it would be inappropriate to include depreciation expense for 2007 post-test-year plant additions or for planned 2008 plant additions, some of which have not yet been built. These matters will be addressed in the general rate case.

Consequently, if the Commission believes that an interim rate increase is warranted in this case, Staff suggests that the $65.2 million that it developed as an alternative recommendation is the most appropriate amount proposed by any party. APS' modifications to Staff's alternative should be rejected.

V. RATE DESIGN.

AECC argues that, if the Commission were to grant interim rates under a cents-per- kWh method, it would be arbitrary and produce unjust and unreasonable rates. Staff, however, disagrees with this conclusion and instead recommends an equal cents-per-kWh method for all classes of ratepayers. Staff believes that this method is fair and reasonable. This issue is essentially a policy decision for the Commission to determine. If the Commission chooses to implement interim rates, the Commission may choose any rate design that is fair and reasonable.

Although AECC points out that the record in the current interim rate case does not include a Class Cost of Service Study ("COSS"), it argues that Staff's recommendation is flawed because it does not reflect the nature of the costs that are causing the need for the increase. AECC states that "[t]he cost recovery mechanism needs to reflect the general nature of the costs that are causing the need for an increase, and a flat per-kWh charge does not adhere to this fundamental rate design objective."[24] AECC additionally states that Staff and RUCO "continue to support a rate design that does not align the surcharge with the nature of the cost increase."[25] This case, however, does not include a complete record as to cost causation, as there would be in a general rate case. Therefore, the general principles for rate design that are applicable to general rate cases should not be applied to interim rates. The Commission must determine a fair and equitable way to distribute interim rates without the help of a COSS, and it may use any method that is fair and reasonable.

AECC argues that Staff is "abandoning any pretext of attempting to balance the interest of all parties by preferring the per kWh charge despite its shortcomings because 'as a general matter . . . the residential customers may be encountering hardships from the economic conditions.'"[26] Actually, Staff recommends a cents per kWh method because Staff has tried to balance the interests of all parties and has tried to develop a recommendation that considers those various interests. (Tr. at 651; Staff's Int. Post-Hrg. Br. at 41).

Staff understands that a formalized study has not been conducted to determine how the current economic conditions will impact each specific class. Also, Staff does not dispute that a large commercial or industrial customer may experience burdens related to interim rates.[27] Staff is concerned, however, about the rate impacts for customers who have the least ability to pay and generally believes that these customers tend to be the smaller customers, such as small commercial or residential customers. (Tr. at 620-21). Although AECC contends that exempting E-3 and E-4 customers from any potential interim rate increase will address these concerns, there are still many smaller customers that would be significantly burdened by any rate increase at this time. In an attempt to balance the interests of all customers, Staff recommends an equal cents-per-kWh approach as the most appropriate rate design under the circumstances.

---

[24] (AECC's Int. Post-Hrg. Br. at 10).
[25] *Id.* at 9-10.
[26] *Id.* at 10.
[27] (Staff's Int. Post-Hrg. Br. at 9-11).

VI. CONCLUSION.

For the reasons stated in this brief and in Staff's Initial Post-Hearing Brief, Staff believes that APS has not established that interim rate relief is warranted.

RESPECTFULLY SUBMITTED this 8th day of October, 2008.

Janet Wagner, Assistant Chief Counsel
Maureen A. Scott, Attorney
Charles H. Hains, Attorney
Amanda Ho, Attorney
Legal Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007
(602) 542-3402

Original and thirteen (13) copies
of the foregoing were filed this
8th day of October, 2008 with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85008

Copies of the foregoing mailed this
8th day of October, 2008 to:

Thomas L. Mumaw
Meghan H. Grabel
PINNACLE WEST CAPITAL CORPORATION
LAW DEPARTMENT
P.O. Box 53999
Phoenix, Arizona 85072-3999

William J. Maledon
OSBORN MALEDON P.A.
2929 North Central Avenue
Phoenix, Arizona 85067-6379

Robert Metli
SNELL & WILMER L.L.P.
400 East Van Buren Street
Phoenix, Arizona 85004-2202

Barbara Klemstine
Zachary Fryer
Susan Casady
ARIZONA PUBLIC SERVICE COMPANY
P.O. Box 53999
Mail Station 9708
Phoenix, Arizona 85072-3999

Michael L. Kurtz
Kurt J. Boehm
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202

C. Webb Crockett
Patrick J. Black
FENNEMORE CRAIG P.C.
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012-2913

Lawrence V. Robertson, Jr.
Attorney at Law
P.O. Box 1448
Tubac, Arizona 85646

Michael A. Curtis
William P. Sullivan
CURTIS, GOODWIN, SULLIVAN,
UDALL & SCHWAB, P.L.C.
501 East Thomas Road
Phoenix, Arizona 85012-3205

Timothy M. Hogan
ARIZONA CENTER FOR LAW IN
THE PUBLIC INTEREST
202 East McDowell Road, Suite 153
Phoenix, Arizona 85004

Daniel W. Pozefsky
RUCO
1110 West Washington Street, Suite 220
Phoenix, Arizona 85007

Michael M. Grant
GALLAGHER & KENNEDY
2575 East Camelback Road
Phoenix, Arizona 85016-9225

Gary Yaquinto
ARIZONA INVESTMENT COUNCIL
2100 North Central Avenue, Suite 210
Phoenix, Arizona 85004

Jay I. Moyes
Karen E. Nally
MOYES SELLERS & SIMS
1850 North Central Avenue, Suite 1100
Phoenix, Arizona 85004-0001

David Berry
WESTERN RESOURCE ADVOCATES
P.O. Box 1064
Scottsdale, Arizona 85252

Jeff Schlegel
SWEEP Arizona Representative
1167 West Samalayuca Drive
Tucson, Arizona 85704

Jeffrey J. Woner
K.R. SALINE & ASSOC., PLC
160 North Pasadena, Suite 101
Mesa, Arizona 85201

Scott Canty, General Counsel
THE HOPI TRIBE
P.O. Box 123
Kykotsmovi, Arizona 86039

Monica A. Martinez

S:\JWagner\08-0172\Post-Hearing Reply Brief 10-08-08.doc